

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X
KEN CHENG,

Index No.: 707186/2019

Plaintiff,

- against -

**NOTICE OF FILING OF
NOTICE OF REMOVAL**

MICHAEL J. CELOTTO, and
COSMOS FOOD PRODUCTS INC.,

Defendants.

-----X
S I R :

PLEASE TAKE NOTICE that defendants, MICHAEL J. CELOTTO and COSMOS FOOD PRODUCTS, INC., in the above-entitled action, have on the 23rd day of May, 2019, removed this action to the United States District Court for the Eastern District of New York by filing a Notice of Removal, a copy of which is annexed hereto, in the office of the Clerk of the United States District Court for the Eastern District of New York, at 225 Cadman Plaza E, Brooklyn, New York 11201, and in the office of the Clerk of the Supreme Court, Queens County.

Dated: New York, New York
May 23, 2019

Yours etc.
BARRETT LAZAR, LLC
Attorneys for Defendants,
MICHAEL J. CELOTTO and COSMOS FOOD
PRODUCTS, INC.

By: _____

SCOTT A. LAZAR (SAL 8807)

225 Broadway, Suite 1510
New York, NY 10007
(718) 268-4155

- and -

145 West Passaic Street
Maywood, NJ 07607
(201) 843-5900

TO: Leo L. Rosales, Esq.
Rosales Del Rosario, PC
39-01 Main Street, Suite 302
Flushing, New York 11354
Attorney for Plaintiff

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
KEN CHENG,

Plaintiff,

- against -

NOTICE OF REMOVAL

MICHAEL J. CELOTTO, and
COSMOS FOOD PRODUCTS INC.,

Defendants.

-----X
S I R:

Pursuant to 28 U.S.C. Sections 1441 and 1446, defendants, MICHAEL J. CELOTTO and COSMOS FOOD PRODUCTS, INC. hereby remove this action from the Supreme Court of the State of New York, County of Queens, Index No. 707186/2019, to this Honorable Court.

1. This Court has original jurisdiction over this action pursuant to 28 U.S.C. Section 1332 on the ground that there is diversity of citizenship between the parties and the amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs.

2. Plaintiff resides at 5320 196th Street, Fresh Meadows, New York, in the County of Queens, State of New York.

3. Plaintiff commenced this action by filing a Verified Complaint, dated April 23, 2019, in the Supreme Court of the State of New York, County of Queens, against defendants, MICHAEL J. CELOTTO and COSMOS FOOD PRODUCTS, INC.

4. Defendant, MICHAEL J. CELOTTO, resides at 93 Harding Avenue, West Haven, CT 06516. See a copy of the Complaint for this address attached hereto as **Exhibit "A"**.

5. Defendant, COSMOS FOOD PRODUCTS INC. has a principal place of business located at 200 Callegari Drive, West Haven CT 06516. See **Exhibit "A"**.

6. The Complaint (**Exhibit "A"**) alleges that plaintiffs sustained damages in an amount exceeding the jurisdictional limit of any lower court resulting from defendants' alleged negligence, carelessness, recklessness and/or intentional acts.

7. The accident occurred on the westbound side of I-495/Long Island Expressway near Flushing Meadows-Corona Park in Queens, New York. (See **Exhibit "A"**).

8. As a result of this accident plaintiff KEN CHENG allegedly sustained severe and permanent personal injuries. (See **Exhibit "A"**).

9. Based on the foregoing allegations and claims, this action is one in which the amount in controversy exceeds the sum of \$75,000.00 exclusive of interest and costs. Therefore, it is respectfully submitted that this action is removable under 28 U.S.C. Section 1441(a) as one over which this Honorable Court has original jurisdiction pursuant to 28 U.S.C. section 1332(a).

10. Defendants received first notice of this action, by service by the plaintiff, by receipt of the Summons and Verified Complaint on May 6, 2019. See the filed Affidavit of Services as to Defendants, attached hereto as **Exhibit "B"**.

11. This Notice of Removal is filed within thirty (30) days of defendants' receipt of the Complaint, by service, and is, therefore, timely filed pursuant to 28 U.S.C. Section 1446(b).

12. Written notice of the filing of this Notice of Removal has been served on plaintiff's counsel and a copy of this Notice has been forwarded for e-filing with the Office of the Clerk of the Supreme Court of the State of New York, County of Queens, 88-11 Sutphin Boulevard, Jamaica, New York 11435, to effect removal of this action to the United States District Court pursuant to 28 U.S.C. §1446(d).

WHEREFORE, defendants, MICHAEL J. CELOTTO and COSMOS FOOD PRODUCTS, INC., request that this matter be removed from the Supreme Court of the State of New York, County of Queens, to this Honorable Court.

Dated: New York, New York
May 23, 2019

Yours etc.
BARRETT LAZAR, LLC
Attorneys for Defendants,
MICHAEL J. CELOTTO and COSMOS FOOD
PRODUCTS, INC.

By: 
SCOTT A. LAZAR (SAL 8807)

225 Broadway, Suite 1510
New York, NY 10007
(718) 268-4155

- and -

145 West Passaic Street
Maywood, NJ 07607
(201) 843-5900

TO: Leo L. Rosales, Esq.
Rosales Del Rosario, PC
39-01 Main Street, Suite 302
Flushing, New York 11354
Attorney for Plaintiff

Exhibit A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

Index No. 707186/2019

KEN CHENG,

Plaintiff,

- against -

VERIFIED COMPLAINT

MICHAEL J CELOTTO, and
COSMOS FOOD PRODUCTS INC.,

Defendants.

Plaintiff KEN CHENG, by his undersigned counselors ROSALES DEL ROSARIO PC complaining of herein defendants MICHAEL J CELOTTO and COSMOS FOOD PRODUCTS INC., respectfully alleges upon information and belief that:

1. At the time of the commencement of this action and all times hereinafter mentioned, plaintiff was and still is a resident of Queens County in the State of New York.
2. At all times herein mentioned, defendant MICHAEL J CELOTTO, ("driver") resided and still resides at 93 Harding Ave., West Haven, CT 06516, where he can be served with summons and other legal papers.
3. At all times herein mentioned, defendant COSMOS FOOD PRODUCTS INC. is a foreign corporation doing business in the State of New York.
4. At all times herein mentioned, defendant COSMOS FOOD PRODUCTS INC., ("corporation") holds an office at 200 Callegari Dr., West Haven, CT 06516, where it can be served with summons and other legal papers.
5. At all times herein mentioned, defendant driver was a lawful employee, contractor, servant, agent and/or supervisee of defendant corporation.
6. At all times herein mentioned, defendant(s) owned a 2010-model motor vehicle with Connecticut plate number/registration number "58370A".
7. At all times herein mentioned, defendant(s) operated the above vehicle with the implied and/or express consent of the owner.
8. At all times herein mentioned, defendant(s) managed the above vehicle with the implied and/or express consent of the owner.
9. At all times herein mentioned, defendant(s) maintained the above vehicle with the implied and/or express consent of the owner.

10. At all times herein mentioned, defendant driver operated the above-described motor vehicle within the scope of a contractual relationship or employment with defendant corporation.

11. At all times herein mentioned, defendant corporation derived income from the operation of the above vehicle by defendant driver.

12. On or about October 18, 2017 at around 11:00 AM, defendant(s) operated the above vehicle.

13. On or about October 18, 2017 at around 11:00 AM, defendant(s) maintained the above vehicle.

14. On or about October 18, 2017 at around 11:00 AM, defendant(s) managed the above vehicle.

15. On or about October 18, 2017 at around 11:00 AM, defendant(s) controlled the above vehicle.

16. On or about October 18, 2017 at around 11:00 AM, defendant(s) was/were the lessee(s) of the above vehicle.

17. On or about October 18, 2017 at around 11:00 AM, defendant(s) leased the above vehicle.

18. At all times herein mentioned I-495/Long Island Expressway in Queens, NY was a public thoroughfare.

19. On or about October 18, 2017 at around 11:00 AM, plaintiff operated a 2002-model Toyota motor vehicle with New York plate number "HF56886".

20. On or about October 18, 2017 at around 11:00 AM, plaintiff's vehicle was traveling on westbound I-495/Long Island Expressway, near Flushing Meadows-Corona Park in Queens, NY.

21. On or about October 18, 2017 at around 11:00 AM, defendants' vehicle was traveling on westbound I-495/Long Island Expressway near Flushing Meadows-Corona Park in Queens, NY.

22. On or about October 18, 2017 at around 11:00 AM, plaintiff's vehicle was struck by defendants' vehicle.

23. On or about October 18, 2017 at around 11:00 AM, plaintiff and defendants' vehicles came into contact.

24. The impact of the collision was strong enough to heavily damage plaintiff's vehicle and cause serious injuries to plaintiff's body.

25. As a direct and proximate result of the carelessness, negligence, and/or recklessness of defendants in the ownership, operation, maintenance, management and control of their vehicle, plaintiff sustained serious physical injuries, and suffered economic losses greater than basic economic loss as respectively defined in subdivisions (d) and (a) of Section 5102 of the Insurance Law.

26. As a direct and proximate result of the carelessness, negligence, and/or recklessness of defendants, plaintiff was seriously injured, bruised, and wounded, left sick, sore, lame and disabled, and still suffer from serious, painful, and permanent bodily injuries, excessive physical pain and mental anguish, severe and substantial emotional distress, with a loss for the capacity for the enjoyment of life.

27. As a direct and proximate result of the carelessness, negligence, and/or recklessness of defendants, plaintiff was, and will be required to undergo medical treatment and incur substantial costs and expenses to alleviate their injuries, pain, and suffering, and will be precluded from engaging in normal activities and pursuits.

28. As a direct and proximate result of the carelessness, negligence, and/or recklessness of defendants, plaintiff's property was damaged.

29. All plaintiff's losses were, are, and will be due solely to and by reason of the carelessness and negligence of defendants without any negligence or want of due care on plaintiff's part contributing thereto.

30. The limitations on liability set forth in CPLR Article 16 do not apply, and this action falls within one or more of the exceptions as set forth in CPLR 1602.

31. The amount of damage plaintiff sustained exceeds the jurisdictional limits of all lower courts that would otherwise have jurisdiction in this matter.

WHEREFORE, plaintiff demands judgment against defendants in an amount that exceeds the jurisdictional limits of all lower courts that would otherwise have jurisdiction over this action together with costs and disbursements and for such other relief as the court deems just and proper.

Dated: Queens, New York
April 23, 2019

By: ~~ROSAL DEL ROSARIO, PC~~

LEO L. ROSALES
Attorney for Plaintiff
39-01 Main Street, Suite 302
Flushing, NY 11354
718-762-2953

VERIFICATION

STATE OF NEW YORK)
) S.S.
COUNTY OF QUEENS)

Ken Cheng being duly sworn in
accordance with law, deposes and states that:

1. He/ she is the plaintiff in the within action;
2. He/ she has read the foregoing pleading/motion and know the contents thereof;
3. He/ she acknowledges that the contents of foregoing pleading/motion are true to his/ her own knowledge except as to matters therein stated to be alleged upon information and belief, which, as to those matters, he/ she believes them to be true.

X Ken Cheng  
Printed Name and Signature

SUBSCRIBED AND SWORN to before me
this 23 day of Apr
2019


Notary Public

LEO L. ROSALES
Notary Public, State Of New York
No. 02RO6070397
Qualified in Queens County
Commission Expires

3/4/22

Exhibit B

Affidavit of Service

RECEIVED NYSCEF: 05/10/2019

Supreme Court, QUEENS County, New York

CASE NO.: 707186/2019

Plaintiff / Petitioner: KEN CHENG

Defendant / Respondent: MICHAEL J CELOTTO and COSMOS FOOD PRODUCTS INC.

Network Provided
 Time - 08:01 AM
 Date - May 06, 2019
 GPS
 41.2515672, -72.971257

State of New York: County of Bronx

I **Daniel Swartz** being duly sworn deposes and says: that deponent is not a party to this action, is over 18 years of age and resides in the state of New York.

That on **May 06, 2019 at 08:01 AM at 93 Harding Avenue, West Haven, CT 06516**, deponent served the within **Summons, Verified Complaint, Notice of Electronic Filing, Confirmation Notice, and Verification on MICHAEL J CELOTTO** herein known as Recipient.

Said service was effected in the following manner; **SUITABLE AGE PERSON**

By delivering thereat a true copy of each to **"John Doe"**, a person of suitable age and discretion.

Deponent also enclosed a copy of the same in a postpaid sealed envelope, properly addressed to the recipient at 93 Harding Avenue, West Haven, CT 06516 by regular mail and deposited said envelope in an official depository under the exclusive care and custody of the United States Postal Service within State of New York on 5/9/2019.

Deponent describes the individual served to the best of deponent's ability at the time and circumstances of service as follows: **Caucasian, Male, 5' 7", 160 - 170 lbs, Gray hair, 50 - 55 years**

Server Comments: A caucasian male answered the door and I asked if Michael Celotto was home. The male asked why I was asking for Michael Celotto. I told him I had a legal document that included a summons and complaint. The man said ok and took the documents.

Military Status: Based upon inquiry of the party served, defendant is not in the military service of the United States of America.


 Daniel Swartz

Notary Section

Subscribed and affirmed, or sworn to before me this 9th day of May, 2019.

Notary Public:

Commission Expires:

Jennifer Reis
 Notary Public State of New York
 Qualified in Bronx County
 Commission Expires Dec 27th, 2020
 No. 01RE6352495

Affidavit of Service

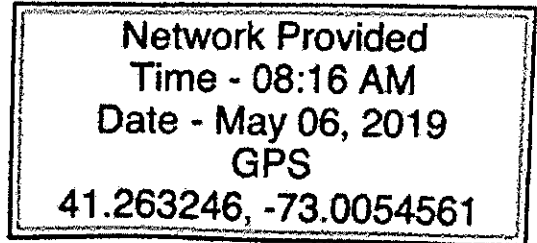
RECEIVED NYSCEF: 05/10/2019

Supreme Court, QUEENS County, New York

Case No.: 707186/2019

Plaintiff / Petitioner: KEN CHENG

Defendant / Respondent: MICHAEL J CELOTTO and COSMOS FOOD PRODUCTS INC.



State of New York: County of Bronx

I **Daniel Swartz** being duly sworn deposes and says: that deponent is not a party to this action, is over 18 years of age, and resides in the state where service took place.

That on **May 06, 2019 at 08:16 AM**,

I served by delivering and leaving a true copy of the **Summons, Verified Complaint, Notice of Electronic Filing, Confirmation Notice, and Verification** with Mr. Cosmo, as Agent, authorized to accept service of process for **COSMOS FOOD PRODUCTS INC.** at 200 Callegari Drive, West Haven, CT 06516.

Said service was effected in the following manner: **Corporation/Business Entity/Government Agency**

Deponent describes the individual served to the best of the deponent's ability at the time and circumstances of service as follows: **Caucasian, Male, 5' 7", 170 - 180 lbs, Gray hair, 45 - 50 years**

Daniel Swartz

Notary Section

Subscribed and affirmed or sworn to before me this 9th day of May, 2019.

Notary Public: _____
Commission Expires: _____

Jennifer Reis
Notary Public State of New York
Qualified in Bronx County
Commission Expires Dec 27th, 2020
No. 01 RE6352495

AFFIDAVIT OF SERVICE

STATE OF NEW YORK :
 : ss
COUNTY OF NEW YORK :

I, Dana Riccio, being duly sworn, deposes and says that deponent is not a party to the action and is over 18 years of age.

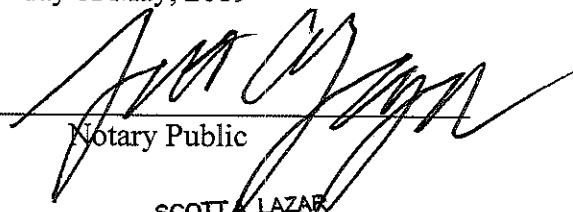
On May 23, 2019, deponent served the within Civil Cover Sheet, Notice of Filing of Notice of Removal and Notice of Removal via e-file and UPS Overnight Mail upon:

Leo L. Rosales, Esq.
Rosales Del Rosario, PC
39-01 Main Street, Suite 302
Flushing, New York 11354
Attorney for Plaintiff



Dana Riccio

Sworn and Subscribed to before me
this 23rd day of May, 2019



Notary Public

SCOTT A. LAZAR
Notary Public, State of New York
Reg. No. 02LA4714411
Qualified in New York County
Commission Expires June 30 2022